FOREIGN ADMINISTRATORS—PLEADING.—In *Lusk* v. *Kimball* (Circ. Ct. West. Dist. of Va.), 87 Fed. 545, it is held by Paul, J., in accordance with well-settled principles, that a foreign administrator has no *locus standi* in the courts of Virginia until he has qualified and given the required bond in this State. It is further held that procuring letters of administration here, after the institution of the action, will not cure the want of authority at the time of suit brought, and that a plea denying the authority of the plaintiff to sue is a plea in bar of the action. *Dickinson* v. *McCraw*, 4 Rand. 158; *Noonan* v. *Bradley*, 9 Wall. 394; *Lells* v. *Holder*, 12 Fed. 668; 8 Enc. Pl. & Pr. 700, 701. See also *Fugate* v. *Moore*, 86 Va. 1045; *Doolittle* v. *Lewis*, 7 Johns. Ch. 45 (11 Am. Dec. 389 and note); *Petersen* v. *Chemical Bank*, 32 N. Y. 21 (88 Am. Dec. 298 and extensive note). The plea in such case is *ne unques executor*. *Lanning* v. *Locket*, 4 Woods, 459; 3 Chitty Pl. 942.

In *Petersen* v. *Chemical Bank*, *supra*, it is held that while a foreign executor cannot himself maintain an action in New York, the disability attaches to the person and not to the subject of the action; and hence that the assignee of such foreign executor may sue and assert title to property or *choses* transferred to him by the foreign representative. Any other rule would impair the negotiability of mercantile paper held by a decedent. Story, Confl. Laws, 258, 259.

It is also held in the same case that voluntary payments made to the foreign representative will discharge the debt.

HUSBAND AND WIFE—ANTE-NUPTIAL CONVEYANCE IN FRAUD OF MARITAL RIGHTS.—It has from earliest times been an established principle of the common law that a voluntary conveyance of property, secretly made by a woman pending a marriage engagement, afterwards consummated, in order to deprive the husband of his marital rights in such property, is fraudulent and will be annulled in equity. *Strathmore* v. *Bowes*, 1 Ves. Jr. 28; *Waller* v. *Armistead*, 2 Leigh, 11; *Fletcher* v. *Ashby*, 3 Gratt. 332; *Gregory* v. *Winston*, 26 Gratt. 102. And it is very generally held that the modern married women's statutes have not altered the principle, even as to property in which, upon consummation of the marriage, the husband would have no legal interest. 2 Bish. Married Women, 350–354. The husband in such case reasonably expects to enjoy the property owned by his wife, and to share in her estate as a favored legatee or distributee, in case he survive her; he therefore has the right to complain where she secretly strips herself of her property before marriage.

Like most good rules, the principle stated works both ways—in favor of the wife as well as the husband. Hence, where the prospective husband is the grantor, the disappointed wife may have the ante-nuptial conveyance annulled as a fraud upon her rights. *Stewart* v. *Stewart*, 3 J. J. Marsh. 48; *Chandler* v. *Hollingsworth*, 3 Del. Ch. 99; 2 Bish. Mar. Wom. 350 *et seq.*

The Supreme Court of North Dakota has just handed down a learned opinion maintaining the rights of the wife in such case. After an exhaustive review of the authorities on the general subject of ante-nuptial conveyances in fraud of marital rights, the court says:

"Whatever may be the law in the mother country, the decisions are practically unanimous on this side of the water that the mere fact that a secret transfer was

made after engagement is, with an exception to be hereafter referred to, conclusive on the question of fraud, so far as the right of dower is concerned. It is true that in some of the cases the element of actual fraud was shown to have existed, and some of the rulings are placed upon that ground. *Kelly* v. *McGrath*, 70 Ala. 75 (45 Am. Rep. 75); *Jones* v. *Jones*, 64 Wis. 301 (25 N. W. 218); *Brown* v. *Bronson*, 35 Mich. 415; *Smith* v. *Smith*, 6 N. J. Eq. 515; *Green* v. *Green*, 34 Kan. 740 (10 Pac. 156); *Petty* v. *Petty*, 4 B. Mon. 215 (39 Am. Dec. 501); *Jenny* v. *Jenny*, 24 Vt. 324. But in the great majority of the cases the broad rule is enunciated that a man owes to the woman to whom he is betrothed the utmost good faith, and that he cannot, consistently with that sacred obligation, secretly devest himself of property in which she would by the marriage secure rights which would thereafter be beyond his control. On the proposition that a secret transfer of his real property is, except under special circumstances, fraudulent, as a matter of law, as to her dower right, we cite the following cases: *Davis* v. *Davis*, 5 Mo. 183; *Swaine* v. *Perine*, 5 Johns. Ch. 482 (9 Am. Dec. 318); *Chandler* v. *Hollingsworth*, 3 Del. Ch. 99; *Youngs* v. *Carter*, 50 How. Prac. 410, affirmed on appeal in 10 Hun. 194; *Cranson* v. *Cranson*, 4 Mich. 230 (66 Am. Dec. 534); *Pomeroy* v. *Pomeroy*, 54 How. Prac. 228. See *Gainor* v. *Gainor*, 26 Iowa, 337; *Thayer* v. *Thayer*, 14 Vt. 107 (39 Am. Dec. 211, and note). Many of the cases which make an exception in favor of a reasonable provision for children treat of the transaction as fraudulent in all other cases, without reference to the intention of the party who makes the transfer."

PRESUMPTIONS OF FACT.—In *Bennett* v. *State* (Ga.), 29 S. E. 920, on an indictment for fornication, there was no proof whether the accused or his partner in the crime were married or single. The lower court instructed the jury that in order to constitute the crime of fornication both must have been single, but that the single state is the natural condition of man and woman, and in the absence of any proof on the subject the law presumes that the single or unmarried state continues. The first portion of this instruction was held on appeal to be proper, but the appellate court reversed the ruling of the lower court as to the presumption that the unmarried state continues, saying: "There is no presumption of law or of fact that a man or a woman is single, nor any presumption to the contrary. There is no presumption that a man is not a member of the church, or of the Masonic or any other order, simply because he was not a member in early life. Nor can it be inferred that a man is uneducated from the fact that such was his original condition. Yet there is as much reason for a presumption in such cases as there is for presuming that a man is unmarried because that must necessarily have been his first state. It may be that at a fixed age a majority of persons are single, and that at a more advanced age a majority are married, but it would be very uncertain and unreliable to presume that a particular individual of either age was single or that he was married. Moreover, why should a man in a civilized community, who is competent to marry, he presumed not to have entered into a contract of marriage, when no presumption arises that he has not entered into any other kind of contract? As above stated, the indictment in this case alleged that the accused and the other party to the offense were single at the time it was committed, and the burden was upon the State to prove the averment."